

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00335-MR-WCM

LESLIE DIANNE PHILLIPS,

)

Plaintiff,

)

vs.

)

KILOLOL KIJAKAZI, Acting
Commissioner of Social Security,

)

)

Defendant.

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O R D E R

THIS MATTER is before the Court on the Plaintiff's Motion for Summary Judgment [Doc. 11]; the Defendant's Motion for Summary Judgment [Doc. 15]; the Magistrate Judge's Memorandum and Recommendation regarding the disposition of those motions [Doc. 19]; and the Plaintiff's Objections to the Memorandum and Recommendation [Doc. 21].

Pursuant to 28 U.S.C. § 636(b) and a specific Order of referral of the District Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider these pending motions in the above-

captioned action and to submit to this Court a recommendation for the disposition of these motions.

On November 23, 2021, the Magistrate Judge entered a Memorandum and Recommendation [Doc. 19] in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the disposition of these motions [Docs. 11, 15]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. After receiving an extension of time to do so [see Text-Only Order entered Nov. 30, 2021], the Plaintiff timely filed Objections on December 17, 2021. [Doc. 21].

In her Objections, the Plaintiff argues, *inter alia*, that the Magistrate Judge erred in declining her request for a stay of this action for briefing on the merits of the constitutionality of the Commissioner's decision in light of the recent Supreme Court cases of Collins v. Yellen, 141 S. Ct. 761 (2021), and Seila Law, LLC v. Consumer Financial Protection Bureau, 140 S. Ct. 2183 (2020). [Doc. 21 at 1-2].

Despite the fact that both Collins and Seila Law were decided before the Plaintiff's motion for summary judgment in this case was due, the Plaintiff did not raise this constitutional issue in her initial briefing. [See Doc. 12].

response to the Defendant's motion for summary judgment, the Plaintiff again did not make any substantive argument regarding this constitutional claim; instead, she merely requested a stay for briefing on the issue. [Doc. 18 at 1]. The Magistrate Judge correctly declined to stay the matter on the grounds that the Plaintiff had not made any substantive argument about the applicability of these decisions to the present case and because the Plaintiff had not filed a separate motion seeking such relief in violation of the Court's Local Rules. [Doc. 19 at 11-12]. The Plaintiff's objection to the Magistrate Judge's recommendation regarding the stay is therefore overruled.

Within her Objections, the Plaintiff now renews her request for a stay with this Court. [Doc. 21 at 2]. For the same reasons articulated by the Magistrate Judge [Doc. 19 at 11-12], the Court declines to issue a stay in this matter.

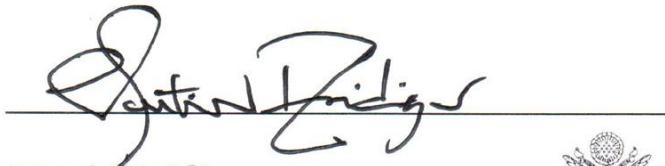
After careful consideration of the Magistrate Judge's Memorandum and Recommendation [Doc. 19] and the Plaintiff's Objections thereto [Doc. 21], the Court finds that the Magistrate Judge's proposed findings of fact are correct and that his proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby overrules the Plaintiff's Objections and accepts the Magistrate Judge's recommendation that the Commissioner's decision should be affirmed.

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 19] is **ACCEPTED**; the Plaintiff's Objections thereto [Doc. 21] are **OVERRULED**; the Plaintiff's Motion for Summary Judgment [Doc. 11] is **DENIED**; the Defendant's Motion for Summary Judgment [Doc. 15] is **GRANTED**; and the decision of the Commissioner is hereby **AFFIRMED**. This case is hereby **DISMISSED**.

A judgment shall be entered simultaneously herewith.

IT IS SO ORDERED.

Signed: March 17, 2022



Martin Reidinger
Chief United States District Judge 